

9/28/01

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT  
OF THE TTAB

Paper No. 9  
DEB

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Boley Corporation

Serial No. 75/704,871

Anthony O. Cormier for Boley Corporation.

Sally Y. Shih, Trademark Examining Attorney, Law Office 106  
(Mary I. Sparrow, Managing Attorney).

Before Chapman, Bucher and Rogers, Administrative Trademark  
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Boley Corporation seeks registration of the mark  
LITTLE GOURMET KITCHEN (with KITCHEN disclaimed) for  
"plastic toy kitchen playsets," in International Class 28.<sup>1</sup>

Registration has been finally refused under Section  
2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the  
ground that applicant's mark, as applied to its identified  
goods, so resembles the previously registered mark LITTLE

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<sup>1</sup> Application Serial No. 75/704,871, filed on May 14, 1999,  
based upon an allegation of use in commerce since October 16,  
1997.

GOURMET for "children's toys, namely, tea sets, bakeware sets and cookware sets"<sup>2</sup> as to be likely to cause confusion, to cause mistake or to deceive.

Applicant has appealed. Briefs have been filed, but applicant did not request an oral hearing before the Board. We affirm the refusal to register. In reaching this conclusion, we have considered all of the relevant du Pont<sup>3</sup> factors.

Turning first to a consideration of the respective marks, applicant's mark LITTLE GOURMET KITCHEN and the registered mark LITTLE GOURMET are extremely similar in connotation and appearance. Specifically, the marks connote something associated with toys used by children who are pretending to do food preparation in a play kitchen. Applicant has taken registrant's mark in its entirety and simply added the highly descriptive word KITCHEN to it. While the drawing shows a typed drawing, we note that on the specimens of record, LITTLE GOURMET is shown in a different font and lettering style than KITCHEN each time that it occurs - on the top of the page and again on each

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<sup>2</sup> Reg. No. 2,301,514, issued December 21, 1999. The claimed dates of first use and first use in commerce are 1991.

<sup>3</sup> See In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973).

of the images showing different playsets in what look like photographs of playsets in their blister packages:

# LITTLE GOURMET KITCHEN

The advertisement displays several blister packages for the Little Gourmet Kitchen line. The packages are arranged in a collage. Some packages are shown in their original retail boxes, while others are shown as individual blister packs. The packages feature various kitchen-themed toys, including baking sets, chef sets, and tubby pot sets. A photograph in the bottom right corner shows two children, a boy and a girl, sitting at a table and playing with the toys. The background of the advertisement is a light gray with a subtle pattern.

**#40544**  
Little Gourmet Kitchen  
Baking Fun Playset  
3 Asst'd Styles  
12 pcs / 48 pcs / 4.4" / 28 lbs  
Card Size:  
8.75"W x 12"H

**#40546**  
Little Gourmet Kitchen  
Gourmet Chef Playset  
4 Asst'd Styles  
PVC Bag with Header  
12 pcs / 96 pcs / 2.62" / 22 lbs  
Bag Size:  
5.75"W x 8.5"H

**#40522**  
Tubby Pot Kitchen Set  
PVC Bag with Header  
6 pcs / 12 pcs / 4.36" / 20 lbs

**#40518**  
Little Gourmet Kitchen playset  
3 Asst'd Styles  
12 pcs / 48 pcs / 4.4" / 25 lbs  
Card Size:  
8.75"W x 12"H

**BOLEY ♦ Phone: (213) 688-8802 ♦ Fax: (213) 688-7484**

Hence, when considered in their entirety, we conclude that the marks will create identical overall commercial impressions.

We turn next to the goods. Applicant's goods are a bit broader in that they include "kitchen playsets" generally. Registrant's goods comprise three specific subsets of kitchen playsets, namely tea sets, bakeware sets and cookware sets. Judging from the specimens of record, it appears as if baking playsets constitute a large portion of applicant's kitchen playsets. Accordingly, while some of the goods of applicant and registrant are identical, the balance of the respective goods are closely related.

Accordingly, with quite similar marks used on the same or closely-related goods, we find a likelihood of confusion.

*Decision:* The refusal to register is affirmed.